

Singapore's Legislative Approach to the COVID-19 Public Health 'Emergency'

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The COVID-19 pandemic is changing the world as we know it, not only in terms of public health, but also in social, economic, and legal/constitutional terms. Several countries have invoked emergency powers to access resources and assume wide-ranging executive powers to counter the growing epidemic within their borders. The invocation of emergency powers presumes that the existence of exigent circumstances which threaten the state or regime. The delegation of extraordinary powers to issue decrees and suspend legal processes and rights are theoretically justified at resolving the threat to the system and restoring it to its previous constitutional state. At the same time, emergency powers implicate serious constitutional issues, including [whether they are properly invoked, whether the suspension of rights is justified, and whether this will lead to a slide into a more authoritarian world](#).

However, the powers required to address severe threats to the state need not implicate emergency proclamations. Indeed, many countries employ what Ferejohn and Pasquino have identified as the [legislative model](#) whereby emergencies are handled through ordinary legislation delegating "special and temporary powers to the executive." It allows close legislative supervision of the exercise of powers by the executive and sets a timely ending to that delegation. The approach in the [United Kingdom](#), [Malaysia](#), and now Singapore falls within this legislative model. This post will examine the use of ordinary statute to empower the government to manage its response to the COVID-19 outbreak in Singapore.

Singapore's Pandemic Response

Up till late March 2020, Singapore's response to the COVID-19 pandemic was the [envy](#) of many nations. Its strategy of early testing, rapid contact tracing, and isolating cases and close contacts was praised for its [effectiveness](#). Indeed, for some time, Singapore seemed to be successfully 'flattening the curve'. And to top it off, the Singapore government managed to contain the spread of the disease while keeping workplaces, businesses, and schools open.

This all, however, changed when a sudden spike in cases occurred in the [latter half of March](#). The sudden increase was initially due to [imported cases](#) as citizens and long-term residents returning to the country as the government recalled citizens and students on overseas exchange and internship were advised to [return to Singapore](#). However, when the numbers kept increasing and the proportion of cases arising from community spread rose in the [last few days of March](#) and into the [first few](#)

[days of April](#), it was clear that stricter measures were necessary. In this COVID-19 pandemic, just a few days can make a radical difference.

On 3 April 2020, the Prime Minister gave a [national address](#) announcing more stringent measures involving the closure of non-essential businesses, workplaces, and schools for one month. This is a significant step up from the previous round of measures, which had required employers to provide for telecommuting for employees and for public schools to implement one day of home-based learning per week. According to the Prime Minister, the ramped-up measures were necessary and signified a shift from an incremental approach to a more decisive pre-emptive move. This meant that previous legislation, which were tailored specifically to deal with outbreaks of infectious diseases and had served the government well in their initial response to COVID-19, were no longer adequate. New legislation had to be passed and this took the form of the COVID-19 (Temporary Measures) Act 2020 (CTMA).

This is Not an ‘Emergency’

It is nonetheless interesting to examine what emergency powers entail in Singapore and to note that there are important parliamentary oversight requirements set out in the Constitution. The Constitution of the Republic of Singapore expressly provides for emergency powers like in [many constitutions in Asia](#).

Article 150(1) of the constitution states that

“[i]f the President is satisfied that a grave emergency exists whereby the security or economic life of Singapore is threatened, he may issue a Proclamation of Emergency.”

This power to declare an emergency requires parliamentary acquiescence. If it was issued at a time when Parliament is not sitting, article 150(2) requires the President to “summon Parliament as soon as practicable”.

In the meantime, the President is empowered to promulgate ordinances having the force of law only if he is “satisfied that immediate action is required”. Both the proclamation of emergency and the ordinances promulgated by the President will need to be presented to Parliament once it convenes. Parliament has the power under article 150(3) to annul the Proclamation and any ordinance, though without prejudice to anything previously done under them. The provisions are not fail-proof, for sure. If Parliament is not sitting and the President refuses to summon Parliament, judicial intervention could be necessary. It should here be noted that under Singapore’s Westminster system of parliamentary government, the Prime Minister is the head of government and the President, as head of state, has limited powers. Accordingly, the Prime Minister has said that it is the Cabinet that decides whether to issue a Proclamation of Emergency. As per the general convention under the constitution, the President must follow the advice of the Cabinet.

While the Proclamation of Emergency is in force, Parliament's powers to make laws is almost unlimited. Parliament may "make laws with respect to any matter" if it appears to be "required by reason of the emergency" without presidential assent, which is ordinarily required. The only provisions that still require presidential assent are those relating specifically to the Central Provident Fund (Singapore's compulsory retirements fund) (article 22E), laws circumventing or curtailing the President's discretionary powers (article 22H), and the drawing down of past reserves for loans and guarantees (article 144(2) and Supply Bills (article 148A). Apart from these, constitutional rights are largely suspended except those "relating to religion, citizenship, or language". A Proclamation of Emergency has a six-months validity, and ceases to be in force after that period. Any ordinance promulgated in pursuance of the Proclamation would also cease to have effect unless it was a law that could have been validly made apart from the Proclamation of Emergency.

New Legislative Powers

As mentioned, Singapore has not invoked emergency laws to deal with the COVID-19 outbreak. It initially relied on powers provided under the Infectious Diseases Act (IDA), which had been strengthened during the global SARS (Severe Acute Respiratory Syndrome) outbreak in 2002/2003. This was coupled with border control powers under the Immigration Act, which allowed the government to deny entry to travellers from Wuhan, which was the original epicentre of the outbreak, and progressively to travellers from other countries. As of 23 March 2020, all short-term visitors (from anywhere in the world) are not allowed to [enter or transit](#) through Singapore.

The new CTMA however grants the executive greater powers to issue control orders to prevent the spread of COVID-19. The Act identifies two cumulative requirements for the Minister to pass a control order: first, s/he must be satisfied that "the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health" and secondly, that the "control order is necessary or expedient to supplement the Infectious Diseases Act and any other written law." Both these requirements, by using the words "satisfied" and "necessary or expedient" grant wide discretion to the Minister. Control orders may entail requiring people to stay at or in, and not leave, a specified place; restrict movement of or contact between people; require premises or facilities to be closed or be subject to limited access; restrict the time, manner, or extent for the carrying out of any business, undertaking or work; and prohibit or restrict the conduct of or participation in any event or gathering.

The [rapid passing](#) of the law was followed by the swift publication of regulations referred to as the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 the very same day on 7 April 2020. Under these Regulations, every individual must stay at or in, and not leave, his or her ordinary place of residence in Singapore unless to the extent necessary for some specified purposes. These include to work in an essential service and to purchase essentials. One is also allowed to exercise but only alone or with household members. Other exceptions include travelling to assist an individual with a physical or mental disability, or individuals who are 12

years and below or 60 years and above to help with their daily needs. This exception was later narrowed on 10 April, along with other amendments to the Regulations, so that travelling to assist these vulnerable individuals is only permitted “where there is no other assistance available to the individual”. The Regulations prohibit persons meeting with another individual not living in the same place of residence for any social purpose. This includes family members, unless it is a family member who are not able to manage their daily needs.

The movement control regulations are similar to what is in place in many countries, though the exemptions do provide for significant room for individuals to continue to leave the home, especially to exercise alone or with any other individual living with them. However, the Regulations also ambitiously legislate a requirement for individuals to keep a safe distance of at least one metre from any other individual in any public place or common property of any subdivided building. The only exceptions are in lifts, motor vehicles, and on public transport.

The punishment for contravening the control measures are set out in the primary legislation. Under section 34(7) of the CTMA, a person who, without reasonable excuse, contravenes a control order commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and/or imprisonment for a term not exceeding 6 months. Repeat offenders could be fined up to \$12,000 and/or see their jail term doubled to 12 months.

When the regulations were initially passed, enforcement officers only gave out warnings for failure to keep safe distancing. This was presumably to allow individuals to acquaint themselves with the law and to have a chance to change their behaviour. However, after a few days, and some more than [6,000 warnings later](#), enforcement officers are now instructed to give [composition fines of \\$300 immediately](#) for any violations.

The new control order regulations take force alongside existing powers available under the Infectious Diseases Act. Previously, to deal with COVID-19, the government had already implemented a series of new measures, such as the leave-of-absence (LOA) and the new Stay-Home-Notice (SHN), introduced on 17 February [in order to enhance the government’s measures to address COVID-19](#). LOAs are precautionary measures requiring individuals to remain in their place of residence and minimise contact, but they may leave home briefly to attend to matters. On the other hand, SHNs are stricter and do not permit the individual to leave home. Like quarantine orders, SHNs are issued under the IDA and carry criminal penalties for non-compliance. Severe penalties have been imposed for non-compliance with both LOAs and SHNs. These include [revocations of work passes for \(foreign\) work pass holders and of work pass privileges for their employers in relation to breaches of LOAs](#), as well as [cancellation of permanent resident \(PR\) status for a Singapore PR and cancellation of a Singapore citizen’s passport and referral for investigation for possible offences](#) in relation to breaches of SHNs.

Rights, Public Trust, and the Rule of Law

The recent control measures were put in place to deal with is now considered to be [“the most serious crisis”](#) Singapore has faced since independence. However, the Singapore government has assiduously avoided using the term “emergency” or “lockdown”. Instead, the government has termed the initial control period a “Circuit Breaker”, which will be in place for a month between 7 April 2020 and 4 May 2020 (both dates inclusive). The control order regulations remain in force until their expiry, revocation, or annulment by Parliament. What is interesting is that the provisions in the primary statute empowering the issuance of COVID-19 control orders are stated to continue in force for a period of one year from the date it came into operation, i.e. on 7 April 2020. This is twice as long as the six months validity the constitution grants to Proclamations of Emergency.

Movement control measures are clearly problematic as they restrict a whole slew of constitutional rights – from freedom of association, freedom of assembly, to freedom of religion. There has been little vocal objection to these measures. While one could argue that this is because Singaporeans are familiar with such trade-offs of rights versus public goods, it would be too simplistic to cast the Singapore approach as authoritarian. In fact, what this pandemic is showing us is that countries usually associated with liberal constitutionalism have also found it necessary to assume extensive powers to impose movement controls and other forms of social control.

In fact, the Singapore government had initially eschewed strict movement control, favouring instead contact tracing and isolation of a few in order to maintain freedom of movement for the many. It had also sought community and social support for its measures. Thus, when the government restricted social gatherings in places of worship such as churches and mosques, religious groups were [generally supportive of the measures](#), which they justified to their adherents as necessary to save lives. There were more concerted efforts at ensuring transparency and to communicate information to the public. A daily press release from the Ministry of Health states the number of new cases, their origins (whether imported or locally transmitted), the emergence of new clusters, the number of patients who have been discharged, the number of patients who are in critical condition, and the number of patients who are recovering. In addition, the Singapore government also uses a mix of traditional and new media to communicate information and to reinforce public trust. Pre-empting privacy concerns, the government also took pains to assure the public that a [contact tracing app](#) that it developed does not collect or use users’ location data, but only records who they might have been close to and such data will only be handed over if the person is confirmed to have contracted COVID-19.

As the COVID-19 pandemic unfolds further, many questions will be asked about rights, rule of law, and constitutionalism. The legislative model employed by Singapore has authorised restrictions on various constitutional rights, but are meant to be temporary with clear provisions of the period during which these measures are in place. Of course, temporary provisions could be extended by Parliament and Singapore does have a permanent ‘temporary’ law (i.e. the Criminal Law (Temporary Provisions) Act), which has been continuously renewed by Parliament since its

promulgation. However, the argument there is that criminal syndicates and the likes continue to pose threats to public order. One could be more hopeful that the threat that COVID-19 poses to public health will abate sooner than the one year period for which the CTMA is currently valid.

